APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ARROW TRANSPORTATION COMPANY, a corporation, ET AL.,
Appellants,

versus

SOUTHERN RAILWAY COMPANY, a corporation, ET AL.,
Appellees.

Appeal from the United States District Court for the Northern District of Alabama
(Southern Division)

Order

Before RIVES and GEWIN, Circuit Judges.

PER CURIAM:

The Court considers that there is no reasonable prospect that the appellants will ultimately be successful upon this appeal for the reason that the district court was without jurisdiction, as more fully set forth in that Court's opinion.

The motion for injunction pending appeal is therefore denied, but, in order to give the appellants a reasonable opportunity to seek further relief before the Supreme Court or a Justice thereof, the temporary restraining order heretofore entered in this cause is continued in force to and including Saturday, August 11, 1962, and at the end of that day said temporary restraining order shall expire.

Filed Aug. 8/62

/s/ R. T. RIVES, *Judge*

/s/ RICHARD T. RIVES
/s/ WALTER P. GEWIN
U. S. Circuit Judges

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 10224

ARROW TRANSPORTATION COMPANY, a corporation,
O. J. WALLS, D/B/A O. J. WALLS COMPANY,
JOHN G. BAGWELL FARMS & HATCHERY, INC., a corporation,
CITY OF GUNTERSVILLE, ALABAMA, a municipal corporation,
Plaintiffs

vs.

SOUTHERN RAILWAY COMPANY, a corporation,
LOUISVILLE & NASHVILLE RAILROAD COMPANY, a corporation,
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, a corporation,
SEABOARD AIR LINE RAILROAD COMPANY, a corporation,
Defendants

Findings of Fact, Conclusions of Law and Order

This cause came on to be heard on August 1, 1962, on motion and prayer of plaintiffs for a preliminary injunction. Defendant Southern Railway Company having filed motion to dismiss and answer appeared by counsel. Defendant Louisville & Nashville Railroad Company appeared by counsel and waived prior service of the complaint and notice of the time of hearing. Defendants St. Louis-San Francisco Railway Company and Seaboard Air Line Railroad Company appeared by counsel and waived service and notice of hearing. The Tennessee Valley Authority appeared by its General Counsel as *amicus curiae* in support of plaintiffs' motion.

The application was heard on the verified complaint and answer and on affidavits filed on behalf of plaintiffs and of defendant Southern Railway Company and on arguments of counsel. The court handed down its memorandum at 2:00 P.M., on August 2, 1962.

The court makes the following findings of fact:

1. Plaintiffs and defendants are parties to a proceeding now pending before the Interstate Commerce Commission entitled Docket No. I. & S. 7656, *Grain in Multiple Car Shipments—River Crossings to the South.* Plaintiffs seek in this court to maintain the status quo pending a final Commission decision on the merits in that proceeding.

2. The averments contained in paragraph II-A of the complaint are true.

3. The matter in controversy exceeds the sum of $10,000 exclusive of interest and costs.

4. The averments in paragraph III(a), (b), (c) and (e) of the complaint are true, and the averments in the first sentence of paragraph III(d) are true. The City of Guntersville is interested in this action for the reason that it believes that its grain industry is in great jeopardy in the event the tariff schedules under investigation by the Commission in I. & S. Docket 7656 became effective, and believes that same will endanger the prosperity, welfare and common good of its citizens.

5. During the year 1961 the defendants published tariff schedules proposing to reduce their rates and charges on the transportation of grain in multiple car shipments from certain Ohio and Mississippi River ports to numerous destinations in the southeast, which rates, according to the verified complaint filed as an affidavit herein and other affidavits filed herein, will be substantially lower than existing rates.

6. On protest of interested parties, the Interstate Commerce Commission entered an order on August 7, 1961, finding that "there is reason to believe that they [the tariffs] would, if permitted to become effective, result in rates and charges, rules, regulations or practices which would be unjust and unreasonable, in violation of the Interstate Commerce Act, and constitute unfair and destructive

competitive practices in contravention of the National Transportation Policy * * * ", and suspending the effectiveness of the proposed tariffs for the maximum statutory period of 7 months pursuant to Section 15(7) of the Interstate Commerce Act, 49 U.S.C. 15(7). The Commission set the investigation hearings to begin in October 1961.

7. It is admitted by the defendants that the Interstate Commerce Commission hearings scheduled for October 1961 were postponed to January 6, 1962 at Southern Railway Company's request because of its change of counsel and that the railroads agreed to extend the suspension period to July 7, 1962. It is also admitted by the defendants that counsel for the Southern Railway Company became ill during the hearings, that by reason thereof the hearings were interrupted, and that the railroads agreed to extend the suspension period to August 7, 1962. Such delay caused by the Southern Railway Company was compensated by further extension granted by the Southern.

8. The tariff schedules published by the defendants which are currently under investigation by the Commission in I. & S. Docket 7656 will go into effect at 12:01 A.M. on August 7, 1962 unless the suspension period is extended by the defendants or unless the defendants are enjoined from putting them into effect by a court of competent jurisdiction.

9. The hearings before the Commission in I. & S. Docket 7656 began on January 6, 1962 and are still in progress. It is agreed by the parties that the Commission will not be able to enter a final order before August 7, 1962.

10. The plaintiffs are contending before the Commission that the proposed tariff schedules are unjust, unreasonable, discriminatory and destructive and will violate the Interstate Commerce Act and the National Transportation Policy.

11. Defendants have declined to comply with plaintiffs' requests that they agree to extend the suspension period for another sixty days.

12. There is grave danger that irreparable injury, loss or damage may be inflicted on plaintiffs if the proposed rates go into effect at 12:01 A.M. on August 7, 1962, for which plaintiffs will have no adequate remedy at law.

CONCLUSIONS OF LAW

1. Section 15(7) of the Interstate Commerce Act grants exclusive authority to the Interstate Commerce Commission to suspend proposed railroad rates and limits that authority to a period of seven months from the proposed effective date of the rates unless further extended by consent of the carriers proposing the rates.

2. Courts are without authority to enjoin or suspend the effectiveness of rates published by common carriers subject to the jurisdiction of the Interstate Commerce Commission before the entry of a final order by the Commission approving the rates. The only jurisdiction of a Court to enjoin or suspend the effectiveness of proposed common carrier rates arises after a final order of the Interstate Commerce Commission, and this is the authority vested in a specially constituted three-judge district court, upon complaint filed against the United States as a necessary defendant, to review the order of the Commission.

WHEREFORE, it is hereby ORDERED:

1. That the motion for a preliminary injunction and a temporary restraining order be and the same is hereby denied.

2. That the motion of defendant Southern Railway Company that the complaint be dismissed and the same is hereby denied.

This the 3rd day of August, 1962.

C. W. ALLGOOD
United States Judge

APPENDIX C

Memorandum

During the afternoon of Friday, July 27th, last, Judge Grooms and attorneys representing plaintiffs in this case discussed same with me briefly. It was explained to me that this case was one of great and vital importance to all parties concerned, that time was of the essence. Due to the fact that Judge Lynne was on vacation and that Judge Grooms had scheduled his vacation to begin August 1st, the purpose of this conference was to see if my August docket, which is unusually heavy with work, could be interrupted and rescheduled so that an early hearing could be set on motions for preliminary injunction or other relief. At that time I found the earliest date available on my calendar to be August 13th and agreed to set aside my planned work for that day so that this matter might be heard, if necessary.

A complaint was filed by plaintiffs on July 27th. On August 1st a motion for preliminary injunction was filed. Answer together with motion to dismiss was filed on August 1st by defendants.

On the morning of July 30th a conference was arranged in chambers attended by attorneys representing plaintiffs, and by attorneys representing the Southern Railroad, one of the defendants in this case. In a general discussion it was agreed that due to the expiration of the suspension of the proposed rates pursuant to Title 49, U.S.C., Section 15(7) of the Interstate Commerce Act, an early hearing was most important and necessary. It was then agreed that the Court would set aside its schedule for August 1st and set this case together with all motions on that date.

Another conference was held in chambers during the afternoon of July 31st, called by counsel for plaintiffs, for the purpose of advising the Court that proper service had not been obtained on all defendants and to request that the hearing be reset for August 13th. The defendants being represented at the conference, it was agreed that due to

the close time element trial would be had as originally planned on August 1st.

After some discussion I indicated to counsel for plaintiffs that I seriously doubted that this Court has jurisdiction of the subject matter and that at that time, without having had time to properly research the question and with only a bare outline of the facts involved in the case, I was not convinced that the Court should grant the injunctive relief sought.

In the brief time allowed I have been unable to find authority that would remove the doubt as to jurisdiction from my mind. The cases so ably cited by counsel for plaintiffs in briefs and in brilliant oral arguments do not help. To me there are some important factors contained in those cases not found in this case. While the opinion of Judge Lynne, and I know of no Judge whose opinion would have more weight with me, would be most helpful as to the subject matter in this case should the Court have jurisdiction, his opinion in *Arrow Transportation Company* v. *United States of America and others*, 176 Fed. Supp. 411, does not help me on the question of jurisdiction in this case. This is true of the other cases cited by plaintiffs.

Defendants, relying strongly on *The Great Northern Railway Company* case, 281 U.S. Reports 412, have also failed to offer authority that completely satisfies the Court on the question of jurisdiction in this case. Arguments of counsel, however, together with the Court's research have continued and increased the Court's doubt as to jurisdiction.

Since hearing the oral arguments in this case presented brilliantly by learned counsel and after diligent research and as thorough study of briefs as time would allow, I have come to the conclusion, and it is my judgment, that this Court does not at this time have jurisdiction of the subject matter and is without jurisdiction to grant the relief sought in the complaint.

At the same time I am of the opinion that there may be grave danger that irreparable injury loss or damage may

be inflicted on plaintiffs unless the defendants are enjoined from applying the tariff schedules published by them and presumed to go into effect on August 7th, or unless the suspension of the proposed rates is further extended by agreement. I have in conference strongly recommended a sixty-day further suspension of the rates by agreement. This the defendants for good reasons of their own have been unable to do.

I am particularly concerned by this estimated period of approximately sixty days during which the proposed rate decrease will automatically go into effect and during which period plaintiffs will have no adequate remedy at law and will have only the doubtful protection of legal remedy under Title 49, Section 8, of the Interstate Commerce Act. Once the Commission renders a decision in the case the parties have adequate and well-defined remedies at law; therefore, I have convinced myself that should this Court have jurisdiction of this matter, it should consider all of these matters most carefully and deliberately before denying injunctive relief to plaintiffs. At this time I am of the opinion that the ends of justice would be best served by granting temporary injunctive relief for a limited period of time, not to urge the Commission to greater speed in determining this issue but to be sure that the parties conclude the hearings as speedily as possible. However, lacking jurisdiction, I find myself powerless to grant the relief sought; therefore, at this time it is the judgment of the Court that the motion for preliminary injunction be, and the same is hereby denied. At the same time I am denying defendants' motion to dismiss this case.

The Court requests counsel for defendants to submit findings of fact, conclusions of law and order at the earliest possible date.

Dated this the 2nd day of August, 1962.

C. W. Allgood
United States District Judge

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ARROW TRANSPORTATION COMPANY, a corporation, O. J. WALLS, d b a O. J. WALLS COMPANY, JOHN D. BAGWELL FARMS & HATCHERY, INC., a corporation, CITY OF GUNTERSVILLE, ALABAMA, a municipal corporation, *Appellants*

vs.

SOUTHERN RAILWAY COMPANY, a corporation, LOUISVILLE & NASHVILLE RAILROAD COMPANY, a corporation, ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, a corporation, SEABOARD AIRLINE RAILROAD COMPANY, a corporation, *Appellees*

Temporary Restraining Order

This cause coming on to be heard on the motion of the plaintiffs-appellants for a temporary restraining order; and due notice having been given to the defendants-appellees and all parties having been represented by counsel present in court who presented arguments for the respective parties and the Court having before it and having considered the record in the cause and having considered the arguments of counsel, portions of the record in the proceedings before the United States District Court for the Northern District of Alabama, Southern Division, and being fully advised in the premises and of the equities involved, it finds that the District Court concluded that it was without jurisdiction in the premises and that the District Court further found:

> "At the same time I am of the opinion that there may be grave danger that irreparable injury loss or damage may be inflicted on plaintiffs unless the defendants are enjoined from applying the tariff schedules published by them and presumed to go into effect on August 7th, or unless the suspension of the proposed rates is further extended by agreement. I have in confer-

ence strongly recommended a sixty-day further suspension of the rates by agreement. This the defendants for good reasons of their own have been unable to do.

"I am particularly concerned by this estimated period of approximately sixty days during which the proposed rate decrease will automatically go into effect and during which period plaintiffs will have no adequate remedy at law and will have only the doubtful protection of legal remedy under Title 59, [sic] Section 8, of the Interstate Commerce Act."

It appears to this Court from the record that the defendants-appellees are about to apply to rail transportation of grain the tariff schedules published by them which are currently under investigation by the Interstate Commerce Commission, Docket No. I & S 7656—*Grain in Multiple Car Shipments—River Crossings to the South*, which will cause immediate irreparable injury, loss and damage to the plaintiffs-appellants in that the plaintiffs-appellants will lose very substantial amounts of freight traffic and will be irretrievably deprived of substantial freight revenues; and an appeal having been taken by the plaintiffs-appellants to the United States Court of Appeals for the Fifth Circuit from the order, judgment and decree of the United States District Court for the Northern District of Alabama, Southern Division:

NOW, THEREFORE, it is hereby ORDERED and DECREED:

1. That pending further order of this Court, each and all of the defendants-appellees, their respective officers, agents, servants, representatives, employees, attorneys, and successors and all other persons in active concert or participation with them be, and they hereby are temporarily restrained and enjoined from directly or indirectly applying to the rail transportation of grain the tariff schedules published by them which are currently under investigation by the Interstate Commerce Commission in Docket No. I & S 7656—*Grain in Multiple Car Shipments—River Crossings*

to the South, until 11 o'clock a.m. on Wednesday, August 8, 1962, and for such period of time thereafter as may be required by a panel of this Court to hear, determine and pass upon the motion of the plaintiffs-appellants for a temporary restraining order.

2. The plaintiffs-appellants are ordered and directed to file their bond, together with corporate surety, to be approved by the Court, in the sum of $10,000.00, conditioned for the payment of such costs, expenses and damages as may be incurred or suffered by any of the defendants-appellees herein, in giving notice and information of this order, but not including loss of revenue resulting from the issuance of this order.

3. Said motion is set for hearing before a panel of this Court in the Courtroom of the United States Court of Appeals for the Fifth Circuit, Montgomery, Alabama, at 11 o'clock a.m. on Wednesday, the 8th day of August, 1962.

4. Said hearing shall be upon the record certified upon appeal from the District Court of the United States for the Northern District of Alabama, Southern Division, and upon typed briefs, at least four legible copies to be filed.

DONE at Tuscaloosa, Alabama at 6:40 p.m. this the 3rd day of August, 1962.

/s/ WALTER P. GEWIN
United States Circuit Judge

APPENDIX E

SUPREME COURT OF THE UNITED STATES

No. ——, October Term, 1962

ARROW TRANSPORTATION COMPANY, ET AL., *Petitioners*,

vs.

SOUTHERN RAILWAY COMPANY, ET AL.

Order

UPON CONSIDERATION of the application of counsel for petitioners and of the opposition of the respondents thereto,

IT IS ORDERED that the temporary restraining order of the United States Court of Appeals for the Fifth Circuit of August 3, 1962 be, and the same is hereby, extended pending the presentation to and disposition by this Court of a petition for writ of certiorari to review the decision of said Court of Appeals of August 8, 1962 denying an injunction pending appeal. Such a petition for writ of certiorari shall be filed within thirty (30) days from this date.

The bond heretofore filed in the Court of Appeals pursuant to its order of August 3, 1962 shall be deemed to be sufficient but if, for any reason, said bond is deemed to have expired or if it would not protect against the costs resulting from this order, the parties are free to request said Court of Appeals to require and approve a new bond in lieu of said bond. The conditions, stipulations and limitations of the original bond shall be incorporated in any such new bond and when approved, it shall be filed with the Clerk of the Court of Appeals.

(s) HUGO L. BLACK
Associate Justice of the Supreme Court of the United States.

Dated this 17th day
of August, 1962.

APPENDIX F

SUPREME COURT OF THE UNITED STATES

ARROW TRANSPORTATION COMPANY, ET AL., *Applicants*,

v.

SOUTHERN RAILWAY COMPANY, ET AL.

Application for Extension of Temporary Restraining Order

[August 17, 1962.]

MR. JUSTICE BLACK.

This is an application for extension of a temporary restraining order granted by United States Circuit Judge Gewin on August 3, 1962, and temporarily continued by Circuit Judges Rives and Gewin on August 8, 1962. While applicants also ask in the alternative for "injunctive relief," this need not be considered because of my conclusion that they are entitled to have the temporary restraining order extended.

The complaint in the District Court was for an injunction to restrain the defendant railroads from putting into effect a reduction in railway rates for carrying grain in interstate commerce. The reduction was published in a tariff schedule filed with the Commission under authority of § 6(1) of the Interstate Commerce Act, 49 U.S.C. § 6(1). Under § 15(7) of that act the Commission can suspend such new rates for a maximum seven months' period pending hearings on their lawfulness, but if hearings are not completed within seven months the proposed rates "shall go into effect at the end of such period . . . ." Finding that the rates here involved might be "unjust and unreasonable, in violation of the Interstate Commerce Act, and constitute unfair and destructive competitive practices in contravention of the National Transportation Policy," the Commission suspended the proposed tariffs but failed to

complete its hearings and enter a final order as to the lawfulness of the rates within the seven month period.

After a brief voluntary suspension by the railroads, the plaintiffs brought this proceeding in the District Court for an injunction, invoking jurisdiction under 28 U.S.C. § 1331, the general federal question provision, § 1332, the diversity provision, and § 1337, which grants jurisdiction for cases arising under federal acts regulating commerce or protecting it against restraints and monopolies. The complaint shows diversity and federal questions and also charges the defendant railroads with conspiracy to violate the antitrust laws and with seeking to reduce rates so drastically that they would be below costs of transportation and would in some instances be below combined railroad-barge rates even if barges carried the grain substantially or wholly free. This latter consequence, it was charged, violates the policy declared by Congress and several times sustained by this Court designed to secure for barge transportation all inherent advantages it has which enable it to transport commodities cheaper than railroads. See note preceding 49 U.S.C. § 1; *Dixie Carriers, Inc.* v. *United States*, 351 U.S. 56 (1956); *I. C. C.* v. *Mechling*, 330 U.S. 567 (1947). See also *Arrow Transportation Co.* v. *United States*, 176 F. Supp. 411 (N.D. Ala. 1959).

The District Judge, after hearings and arguments, found that there was grave danger that putting the new rates into effect would inflict irreparable damages on the plaintiffs and that "the ends of justice would be best served by granting temporary injunctive relief for a limited period of time . . . ." He nevertheless refused to grant relief on the ground that he was without jurisdiction "to enjoin or suspend the effectiveness of rates published by common carriers and subject to the jurisdiction of the Interstate Commerce Commission before the entry of a final order by the Commission approving the rates." This lack of jurisdiction was apparently based on the court's interpretation of § 15(7) as not only depriving the Commission of juris-

diction to suspend rates longer than seven months but also as completely ousting the jurisdiction of a federal court to grant any kind of relief from such rates, however unlawful, unreasonable, and unjust they might be and however deliberately destructive of barge competition.

The Court of Appeals refused to grant an injunction pending appeal by the plaintiffs because it believed that there was "no reasonable prospect" that the plaintiffs would "ultimately be successful" in reversing the District Court's holding that it had no jurisdiction. The Court of Appeals nevertheless continued Judge Gewin's temporary restraining order to give plaintiffs the opportunity to seek relief from this Court "or a Justice thereof."

I am not so sure as the judges of the Court of Appeals that plaintiffs are bound to fail in obtaining review by this Court of the crucial question of the District Court's jurisdiction. This Court has never decided that § 15(7) must be given an interpretation which so substantially destroys the jurisdiction of federal courts to restrain unlawful conduct which inflicts irreparable damage. The consequence is that I think the plaintiffs are entitled to have the temporary restraining order issued by the Court of Appeals extended in order to maintain the *status quo* pending final action in this Court on the question of the District Court's jurisdiction.

The railroads insist that plaintiffs should be required to give a bond of more than a half million dollars to compensate the railroads for loss of profits from anticipated grain traffic. Plaintiffs object on many grounds, one of which is that to require such a bond, which they claim they cannot make, would itself amount to a denial of relief. Both the District Court and the Court of Appeals refused to require plaintiffs to make a bond to compensate for anticipated losses in traffic. The Court of Appeals provided only that plaintiffs file a bond in the sum of $10,000.00, conditioned for the payment of such costs, expenses, and damages as

might be incurred or suffered by any of the defendants in giving notice and information of its order but not including loss of revenue resulting from the issuance of its order. I agree that this bond is sufficient. If for any reason the present bond is deemed to have expired or if it would not protect against the costs resulting from this extension, the parties are free to ask the Court of Appeals to require and approve a new bond in lieu of the old one, to be filed with the clerk of that court, containing the same conditions, stipulations, and limitations.

The temporary restraining order of the Court of Appeals is hereby extended, pending the presentation to this Court of a petition for writ of certiorari to review the decision of the Court of Appeals denying an injunction pending appeal, and pending final consideration and action by this Court on that petition. Plaintiffs are directed to file such petition within 30 days from the date of this order.

APPENDIX G

UNITED STATES COURT OF APPEALS
FIFTH JUDICIAL CIRCUIT

Richard T. Rives
Judge
Montgomery 2, Alabama

August 29, 1962

Messrs. Sirote, Permutt, Friend & Friedman
First Federal Building, Second Floor
Birmingham 3, Alabama

Messrs. Cabaniss & Johnston
First National Bank Bldg., Ninth Floor
Birmingham 3, Alabama

Messrs. Lange, Simpson, Robinson & Somerville
1023 Frank Nelson Building
Birmingham, Alabama

Re: Arrow Transportation Co., et al. v. Southern Railway Co., et al.

Gentlemen:

We thank counsel for their responses to our letter of August 23 asking their views as to whether we should delay decision on the merits of this appeal. We have also received from counsel for the appellees a petition for further bond by appellants in this case, with a request for a hearing on that petition. We Judges have consulted among ourselves upon the most appropriate procedure.

If we should adhere to the opinion expressed in our order of August 8 that the district court had no jurisdiction of the subject matter, it may be that any further bond required of appellants would be in a prohibitive amount, such as would practically deny relief. While Mr. Justice Black has directed the plaintiffs to file a petition for certiorari to review our decision denying an injunction pending ap-

peal, it is still uncertain whether the Supreme Court will grant such a petition. In the event we should adhere to our original view, it seems to us more likely that the Supreme Court might grant a petition for certiorari from the decision on the merits. In view of the tremendous losses suffered by one side or the other from further delay or a denial of further delay, we have reluctantly decided that we should dispose of the appeal on the merits before hearing the petition of the Southern Railway Company for the requirement of further bond. We will give this matter precedence and place it ahead of the large backlog of cases facing us, and hope to be able to enter a decision on the merits of the appeal as soon as we reasonably can.

That decision will materially effect any action on the petition of Southern Railway Company for the requiring of further bond by the appellants. A hearing on that petition will therefore be postponed for the short time necessary for this Court to reach a decision on the merits.

Sincerely yours,

RICHARD T. RIVES
Richard T. Rives
United States Circuit Judge.

RTR/ef

cc: Honorable Warren L. Jones
Honorable Walter P. Gewin

cc: Honorable Edward W. Wadsworth, *Clerk*
New Orleans, Louisiana

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 10224

ARROW TRANSPORTATION COMPANY, a corporation
O. J. WALLS, d/b/a O. J. WALLS COMPANY
JOHN D. BAGWELL FARMS & HATCHERY, INC., a corporation
CITY OF GUNTERSVILLE, ALABAMA, a municipal corporation
Plaintiffs,

v.

SOUTHERN RAILWAY COMPANY, a corporation
LOUISVILLE & NASHVILLE RAILROAD COMPANY, a corporation
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, a corporation
SEABOARD AIRLINE RAILROAD COMPANY, a corporation
Defendants.

Order Denying Stay Order Pending Appeal

This matter coming on to be heard upon the application by the Plaintiffs for a Stay Order pending appeal, pursuant to the provisions of Rule 62 (c) of the Federal Rules of Civil Procedure, and the Court having considered the same, the Court finds that, for the reasons set out in the Order denying the Plaintiffs' application for a temporary injunction this day entered in this cause, the Court is without power or jurisdiction to exercise discretion to grant the relief prayed for in this Motion, and that the same should be denied.

It is, therefore, by the Court, ORDERED that the application for a Stay Order pending appeal before the Circuit Court of Appeals be, and the same is hereby denied.

(2) This Order shall be without prejudice, however, to the right of the Plaintiffs to make a similar application for relief before the Court of Appeals, pursuant to the

provisions of Rule 62 (g) of the Federal Rules of Civil Procedure.

DONE and ORDERED this 3rd day of August, 1962.

C. W. ALLGOOD
District Judge

APPENDIX I

National Transportation Policy

Interstate Commerce Act, note preceding Section 1, 49 U.S.C., Section 1.

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Interstate Commerce Act, Section 15(7), 49 U.S.C., Section 15(7).

> Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate,

fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after the date this amendatory provision takes effect, the burden of proof shall be upon the

carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decison of such questions preference over all other questions pending before it and decide the same as speedily as possible.